



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

November 14, 2016

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Mr. David McVicker
Superintendent
Central Kitsap School District No. 401
P.O. Box 8
Silverdale, Washington 98383-0008

Re: Central Kitsap School District No. 401
OCR Reference No. 10161057

Dear Superintendent McVicker:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is ending its investigation of the referenced complaint against Central Kitsap School District No. 401 (District), effective today. OCR has ceased the investigation based on the enclosed Voluntary Resolution Agreement (Agreement), which the District has signed to address the complaint allegations.

The complaint alleged that the District is discriminating against individuals with disabilities because certain physical facilities and elements at Silverdale Stadium, Olympic High School, and Klahowya Secondary School are inaccessible. Specifically, the complaint alleged:

1. Silverdale Stadium is inaccessible because its covered seating and bleachers lack accessible seating, including vertically dispersed seating, and only has stairs leading to the seating.
2. Olympic High School is inaccessible because:
 - (a) There are too few accessible parking spaces at the school site, and the 12 accessible parking spaces that are provided are not dispersed appropriately.
 - (b) The two accessible parking spaces by the pool building are too steep.
 - (c) The eight accessible parking spaces near the main entrance of the school building are too steep.
 - (d) The pedestrian route from the eight accessible parking spaces to the main entrance of the school building is too steep.
 - (e) The eight accessible parking spaces are not located on the shortest accessible route from the parking to the main entrance.
 - (f) The walkway adjacent to the two accessible parking spaces located closest to Silverdale Stadium is too steep.

3. Klahowya Secondary School is inaccessible because:
 - (a) There is no accessible route from either the accessible parking or the accessible school entrances to the softball and baseball fields.
 - (b) There are no accessible parking spaces located at the softball or baseball fields, and the accessible parking spaces, which are provided in the school parking lot, are too far away.
 - (c) The two accessible parking spaces closest to the softball and baseball fields and tennis courts are too steep.
 - (d) There is a wheel stop installed in the access aisle serving the two accessible spaces, which reduces the width of the accessible route.
 - (e) The spectator seating and viewing areas for the softball and baseball fields have gravel surfaces.
 - (f) The softball and baseball fields lack accessible restrooms.
 - (g) The gymnasium bleachers do not offer accessible seating for individuals with mobility impairments, who do not use wheelchairs.
 - (h) Sports team equipment and chairs block the wheelchair seating area for the gymnasium bleachers during games.
 - (i) The gymnasium bleachers do not offer wheelchair seating that is horizontally dispersed or that have adequate lines of sites.

OCR accepted this complaint for resolution under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities of 1990 (Title II), and their implementing regulations. Section 504 and Title II prohibit disability discrimination in programs and activities receiving federal financial assistance from the Department and by public entities, respectively. The District receives federal financial assistance from the Department and is a public entity, and is therefore required to comply with these federal civil rights laws.

Under the Section 504 and Title II regulations, a school district is prohibited from excluding from participation in, denying the benefits of, or discriminating under any services, programs, or activities of the school district against people with disabilities because its facilities are unusable by or inaccessible to them. See 34 C.F.R. 104.21; 28 C.F.R. 35.149. With respect to existing facilities, a school district is required to operate each program or activity housed in the existing facility so that the program or activity, when viewed in its entirety, is readily accessible to and usable by people with disabilities. See 34 C.F.R. 104.22(a); 28 C.F.R. 35.150(a).

Under the program accessibility standard, a school district is not required to make all existing facilities or every part of its existing facilities accessible, as long as the program or activity provided at each facility is readily accessible to persons with disabilities. See 34 C.F.R. 104.22(a); 28 C.F.R. 35.150(a)(1). A school district is permitted to provide program accessibility in existing facilities through such means as a redesign or acquisition of equipment, reassignment of services to accessible buildings, delivery of services at alternate accessible sites, alteration of existing facilities or construction of new facilities, or any other

method that results in making its services, programs, or activities readily accessible to and usable by people with disabilities. See 34 C.F.R. 104.22(b); 28 C.F.R. 35.150(b)(1). In choosing among available methods, a school district is required to give priority to methods that offer services, programs, and activities to people with disabilities in the most integrated setting appropriate. See *Id.*

With respect to altered or newly constructed facilities, each facility or part of a facility that has been altered or newly constructed is required to be designed, constructed, and maintained in operable working condition, in compliance with the applicable accessibility design standard. See 34 C.F.R. 104.23(a) and (b); 28 C.F.R. 35.133(a), and 35.151(a) and (b). The specific accessibility standard that applies to an altered or newly constructed facility depends upon the date that the alteration or construction commenced. See 34 C.F.R. 104.23(c); 28 C.F.R. 35.151(c).

Additionally, Section 504 and Title II require a school district to ensure that interested persons can obtain information from the district about the existence and location of its accessible services, activities, and facilities, and designate at least one employee who will coordinate and carry out the district's efforts to comply with the Section 504 and Title II regulations. See 34 C.F.R. 104.7 and 104.22(f); 28 C.F.R. 35.107 and 35.163(a). A school district must also take continuing steps to provide notice of the district's designated employee; the availability of information about the district's accessible services, activities, and facilities; and that the district does not discriminate on the basis of disability. See 34 C.F.R. 104.8; 28 C.F.R. 35.106.

Upon notification of this complaint and before OCR had obtained sufficient evidence to support a conclusion of either compliance or noncompliance, the District requested to voluntarily resolve the complaint under Section 302 of OCR's Case Processing Manual (CPM). In OCR's discussions with the District, the District stated that it was already addressing many of the complaint allegations as part of a bond-funded initiative to replace and renovate buildings across the District.

Pursuant to the CPM, a complaint may be resolved at any time when, before the conclusion of an OCR investigation, a school district expresses an interest in resolving the complaint through an agreement and OCR determines that it is appropriate to resolve the complaint with an agreement during the course of an investigation. In such circumstances, the provisions of the agreement must be aligned with the complaint allegations and the information obtained during the investigation, and must be consistent with applicable regulations.

Based on OCR's review of the evidence gathered from the District's initial data response and discussions with District representatives, and OCR's review of the information provided by the complainant regarding the District's facilities, OCR has identified accessibility concerns regarding the disabled parking at Silverdale Stadium, Olympic High School, and Klahowya Secondary School, and regarding the routes of travel from the disabled parking to the various school facilities named by the complaint (e.g., the parking spaces and routes appear to

exceed the maximum slopes permitted for accessible facilities, etc.). There are also accessibility concerns regarding the bleachers at Klahowya Secondary School's gym and its baseball and softball fields, and the bleachers and covered seating at Silverdale Stadium (e.g., the bleachers appear to lack the appropriate type and number of accessible seating, the covered seating appears to lack an accessible route, etc.). However, in order to conclude OCR's investigation, OCR would have had to conduct interviews, review construction and design documents, and inspect and measure the facilities and elements. In light of the District's willingness to address the allegations without further investigation, OCR determined entering into a voluntary resolution agreement was appropriate.

Subsequent resolution discussions between OCR and the District resulted in the District signing the enclosed Agreement, which, when fully implemented, will resolve the allegations and issues raised by the complaint. OCR has determined that the provisions of the Agreement are aligned with the complaint allegations and the information obtained thus far during OCR's investigation, and are consistent with the applicable Section 504 and Title II regulations.

Under the Agreement, the District has committed to take actions, such as:

- Developing and implementing an accessibility plan to ensure that the facilities in question comply with the applicable Section 504 and Title II accessibility requirements.
- Providing timely interim steps pending completion of any changes to ensure that individuals with disabilities have access to the facilities in question.
- Reviewing and revising its accessibility procedures.
- Designating an individual who will be responsible for addressing accessibility questions and requests.
- Providing training to employees who are primarily responsible for implementing the District's accessibility procedures.
- Publishing accessibility-related notices to the students, parents, employees, and school community.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in federal court regardless of OCR's determination. Additionally, the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR will monitor the implementation of the Agreement and will close the complaint when it has determined the terms of the Agreement have been satisfied. The first report under the Agreement is due by November 30, 2016. If the District has any concerns about the implementation of the Agreement, you are encouraged to raise them with OCR.

Thank you for the cooperation that you and your staff, particularly Doug Newman and Jane Wiseman, extended to OCR in resolving this complaint. If you have any questions about this letter, you may contact Charlotte Cunningham, attorney, at (206) 607-1610 or charlotte.cunningham@ed.gov, or Amy Kim, attorney, at (206) 607-1621 or amy.kim@ed.gov.

Sincerely,

/ s /

Sukien Luu
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Honorable Randy Dorn
Superintendent of Public Instruction

Executive Director of Business and Operations
Central Kitsap School District